



December 21, 2001

Mr. Chris Boldt  
Baker & Boldt  
P.O. Box 718  
Dripping Springs, Texas 78620

OR2001-6073

Dear Mr. Boldt:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156548.

The City of Dripping Springs (the "city"), which you represent, received a request for (1) information relating to six identified real estate projects or subdivisions and (2) correspondence and documents sent or generated since March 1, 2001 that reference a regional or comprehensive planning process.<sup>1</sup> The city has informed the requestor that it will release information that is responsive to items 1(a) and 1(b) of the request. The requestor also has been informed that the city has no information that is responsive to items 1(c), 1(d), 1(e), or 1(f), unless item 1(f) refers to a subdivision known as Tustin Ranch, in which case the city will make responsive information available.<sup>2</sup> The city also has advised the requestor that it will release some information that is responsive to item 2 of the request. The city claims that the remaining requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." The purpose of section 552.111 is to protect advice, opinion, and recommendation in the decisional process and to encourage open and frank discussion in the deliberative process. *See Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--

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<sup>1</sup>The six projects or subdivisions are: 1a. Cypress Realty/Cypress Ranch; 1b. Foster Ranch; 1c. Hazy Hills and/or John Hill Ranch; 1d. Spillar Ranch; 1e. Pfluger Ranch; and 1f. Krasovic/Lumbermans/Temple Inland.

<sup>2</sup>We note that chapter 552 of the Government Code does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App. – San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

San Antonio 1982, no writ); Open Records Decision No. 538 at 1-2 (1990). In Open Records Decision No. 615 (1993), this office re-examined the statutory predecessor to section 552.111 in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ). We determined that section 552.111 excepts only those internal communications that consist of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. See ORD 615 at 5. A governmental body's policymaking functions do not encompass routine internal administrative or personnel matters, and disclosure of information about such matters will not inhibit free discussion of policy issues among agency personnel. *Id.*; see also *City of Garland v. The Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000) (holding that personnel-related communications not involving policymaking were not excepted from public disclosure under section 552.111). Section 552.111 is applicable to information created for a governmental body by an outside consultant when the outside consultant is acting at the request of the governmental body and performing a task that is within the authority of the governmental body. See Open Records Decision No. 631 at 2 (1995).

This office also has concluded that a preliminary draft of a document that is intended for public release in its final form necessarily represents the advice, opinion, and recommendation of the drafter with regard to the form and content of the final document, so as to be excepted from disclosure under the statutory predecessor to section 552.111. See Open Records Decision No. 559 at 2 (1990) (applying statutory predecessor). Section 552.111 protects factual information in the draft that also will be included in the final version of the document. See *id.* at 2-3. Thus, section 552.111 encompasses the entire contents, including comments, underlining, deletions, and proofreading marks, of a preliminary draft of a policymaking document that will be released to the public in its final form. See *id.* at 2.

You represent to this office that the submitted information relates to a draft regional plan for land development within the city limits and extraterritorial jurisdiction of the City of Dripping Springs. You inform us that the city asked your law firm, as counsel for the city, to prepare the draft plan. You also inform us that your firm engaged a consulting engineering company, Murfee Engineering Company ("Murfee"), to assist with the project. You state that the information at issue is comprised of drafts, exhibits, and transmittal correspondence created and held exclusively by your law firm and Murfee. You indicate that the land development plan will eventually be presented to and considered by the city council. Based on your representations and our review of the submitted information, we conclude that the city may withhold this information from disclosure in its entirety under section 552.111 of the Government Code. As section 552.111 is dispositive, we need not address sections 552.101, 552.103, or 552.107.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

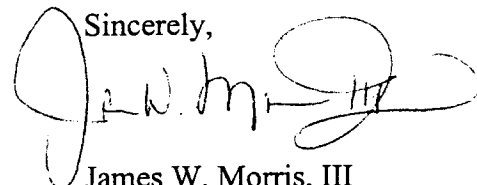
governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,  


James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 156548

Enc: Submitted documents

c: Mr. Colin Clark  
Save Our Springs Alliance  
P.O. Box 684881  
Austin, Texas 78768  
(w/o enclosures)